

CCRB INVESTIGATIVE RECOMMENDATION

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|--|---|---------------------------|---|---|---------------------------------|
| Investigator: Genevieve Lamont | Team: Squad #8 | CCRB Case #: 201904011 | <input checked="" type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Thursday, 05/09/2019 1:10 PM | Location of Incident: Flatbush Avenue and Tilden Avenue. | Precinct: 70 | 18 Mo. SOL 11/9/2020 | EO SOL 6/26/2021 | |
| Date/Time CV Reported Thu, 05/09/2019 3:52 PM | CV Reported At: CCRB | How CV Reported: Phone | Date/Time Received at CCRB Thu, 05/09/2019 3:52 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |

| Subject Officer(s) | Shield | TaxID | Command |
|-----------------------|--------|--------|---------|
| 1. POM Paul Casale | 16369 | 954610 | 070 PCT |
| 2. An officer | | | 070 PCT |
| 3. POM Brian Mccarthy | 17548 | 951982 | 070 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|-------------------------|-----------|--------|----------|
| 1. POM Peter Borisenko | 20164 | 950091 | 070 PCT |
| 2. POM Eduardo Santiago | 17539 | 966838 | 070 PCT |
| 3. POM William Mcknight | 07434 | 955171 | 070 PCT |
| 4. POM Michael Williams | 03751 | 955665 | 070 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|----------------------|---|-----------------------------|
| A.POM Paul Casale | Abuse: At the intersection of Flatbush Avenue and Tilden Avenue in Brooklyn, Police Officer Paul Casale questioned § 87(2)(b) | |
| B.POM Brian Mccarthy | Force: At the intersection of Flatbush Avenue and Tilden Avenue in Brooklyn, Police Officer Brian Mccarthy used physical force against § 87(2)(b) | |
| C.POM Paul Casale | Abuse: At the 70th Precinct stationhouse in Brooklyn, Police Officer Paul Casale searched the vehicle in which § 87(2)(b) was an occupant. | |
| D.POM Brian Mccarthy | Abuse: At the 70th Precinct stationhouse in Brooklyn, Police Officer Brian Mccarthy searched the vehicle in which § 87(2)(b) was an occupant. | |
| E. An officer | Abuse: At the 70th Precinct stationhouse in Brooklyn, an officer damaged § 87(2)(b)'s property. | |
| F.POM Paul Casale | Discourtesy: At the 70th Precinct stationhouse in Brooklyn, Police Officer Paul Casale spoke discourteously to § 87(2)(b) | |

Case Summary

On May 9, 2019, § 87(2)(b) filed the following complaint with the CCRB by phone.

On May 9, 2019, at approximately 1:10 p.m., § 87(2)(b) was pulled over at the intersection of Flatbush Avenue and Tilden Avenue in Brooklyn by PO Paul Casale and PO Brian McCarthy of the 70th Precinct for a broken taillight and failing to signal. After asking for his identification, PO Casale allegedly asked § 87(2)(b) if there was anything in his car that he and PO McCarthy should be aware of, which § 87(2)(b) denied (**Allegation A: Abuse of Authority**; § 87(2)(g)). PO Casale then informed § 87(2)(b) that he smelled marijuana and directed him to step out of the car, which § 87(2)(b) refused to do. After a back and forth in which § 87(2)(b) refused to exit his vehicle, PO Casale allegedly opened the car door, pulled § 87(2)(b) out, and handcuffed him (**Allegation B: Force**; § 87(2)(g)). § 87(2)(b) was then transported to the 70th Precinct stationhouse by PO Peter Borisenko of the 90th Precinct. PO Casale and PO McCarthy searched § 87(2)(b)'s car at the stationhouse (**Allegations C and D: Abuse of Authority**; § 87(2)(g)). § 87(2)(b) alleged that during this search, his speakers were damaged (**Allegation E: Abuse of Authority**; § 87(2)(g)). § 87(2)(b) was released from the stationhouse with three summonses for § 87(2)(b) [BR01 through BR03, respectively]. As PO Casale walked § 87(2)(b) to his vehicle, he allegedly told him that his car was “shitty” (**Allegation F: Discourtesy**; § 87(2)(g)). § 87(2)(b) then left the stationhouse.

Body-worn camera (BWC) footage was obtained from PO Casale, PO McCarthy, PO Borisenko, PO William McKnight, and PO Michael Williams all from the 70th Precinct [BR04 through BR11, respectively].

Findings and Recommendations

Allegation (A) Abuse of Authority: At the intersection of Flatbush Avenue and Tilden Avenue in Brooklyn, Police Officer Paul Casale questioned § 87(2)(b)

§ 87(2)(g), it is undisputed that PO Casale did not question § 87(2)(b) prior to smelling marijuana in his car.

§ 87(2)(b) testified that upon being pulled over, PO Casale approached his driver side window and asked for his license, registration, and insurance. § 87(2)(b) asked why he had been pulled over, to which PO Casale responded that he would provide the reason once he had his identification. It took § 87(2)(b) two to three minutes to find his documents, as he was not sure where in the car they were, which he explained to PO Casale. While he was searching for his documents, PO Casale asked § 87(2)(b) if he had anything in his car that he and PO McCarthy should be aware of, which § 87(2)(b) denied. After this, PO Casale informed him that he smelled marijuana, and asked him to step out of the vehicle [BR12].

PO Casale testified that upon approaching § 87(2)(b)'s driver side window, he requested his license, registration, and insurance. He then smelled the odor of marijuana coming from § 87(2)(b)'s vehicle, and informed him of such. He did not recall if he asked § 87(2)(b) anything prior to smelling the odor of marijuana [BR13]. At 1:30 minutes in his BWC, PO Casale asked § 87(2)(b) if there is marijuana in the car. He does not ask him any questions prior to this [BR04].

As per Patrol Guide Procedure 212-11, upon reasonable suspicion that a person has committed, is committing, or is about to commit a felony or misdemeanor, a member of service may ask pointed and accusatory questions [BR22].

People v Chestnut 43 A.D. 2d 260 (1974) states that the smell of marijuana smoke, with nothing more, is sufficient to provide police officers with probably cause to search an automobile and its occupants [BR18].

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Allegation (B) Force: At the intersection of Flatbush Avenue and Tilden Avenue in Brooklyn, Police Officer Brian McCarthy used physical force against § 87(2)(b)

While § 87(2)(b) alleged that PO Casale forcefully pulled him out of the car, BWC footage showed that PO McCarthy guided § 87(2)(b) out of the car as he was exiting on his own power. [BR04 and BR06, respectively].

§ 87(2)(b) testified that PO Casale informed him that he smelled the odor of marijuana and ordered him to exit the vehicle. § 87(2)(b) did not comply and PO Casale repeated his request. He then told § 87(2)(b) that he would count to five, and if he did not exit the vehicle, he would be arrested for obstruction of justice, which PO McCarthy echoed. PO Casale asked § 87(2)(b) to exit the vehicle approximately four times. § 87(2)(b) informed the officers that he was going to call his family friend. As he pulled out his cellphone, PO Casale opened the door, grabbed the cellphone out his hand, and pulled him out of the car. § 87(2)(b) was then handcuffed and placed in the back of a police vehicle [BR12].

PO Casale testified that after smelling marijuana coming from the vehicle, he ordered § 87(2)(b) to exit the vehicle, which he refused to do. He and § 87(2)(b) engaged in a back and forth conversation, in which § 87(2)(b) refused PO Casale's multiple requests to exit the vehicle. After about five minutes, the car door opened, § 87(2)(b) stood up, exited the vehicle, and complied with being handcuffed. Neither PO Casale or PO McCarthy used any physical force to remove § 87(2)(b) from the vehicle [BR13]. PO McCarthy's testimony was consistent with PO Casale's [BR14].

BWC footage from PO Casale and PO McCarthy showed that PO McCarthy opened the car door and that § 87(2)(b) exited the vehicle on his own [BR04 and BR06, respectively]. As he exited the vehicle, PO McCarthy pulled on § 87(2)(b)'s arm slightly, guiding him out of the car.

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED].

Allegation (C) Abuse of Authority: At the 70th Precinct stationhouse in Brooklyn, Police Officer Paul Casale searched the vehicle in which § 87(2)(b) was an occupant.

Allegation (D) Abuse of Authority: At the 70th Precinct stationhouse in Brooklyn, Police Officer Brian McCarthy searched the vehicle in which § 87(2)(b) was an occupant.

Allegation (E) Discourtesy: At the 70th Precinct stationhouse in Brooklyn, Police Officer Paul Casale spoke discourteously to § 87(2)(b)

Allegation (F) Abuse of Authority: At the 70th Precinct stationhouse in Brooklyn, An officer damaged § 87(2)(b)'s property.

It is undisputed that PO Casale and PO McCarthy searched § 87(2)(b)'s car, § 87(2)(b).
§ 87(2)(b)
§ 87(2)(b)

§ 87(2)(b) testified that he was transported to the 70th Precinct stationhouse in Brooklyn, where he was placed inside the holding cell. He was released an hour and half later, and PO Casale walked him to his vehicle, with PO McCarthy two to three feet behind him. PO Casale and § 87(2)(b) had a back and forth conversation while walking, in which § 87(2)(b) asked him if he enjoyed driving his Lexus. PO Casale responded that the vehicle was “shitty” and told § 87(2)(b) “you got what was good for you”. He then returned § 87(2)(b) his property, and he and PO McCarthy left the scene. § 87(2)(b) then looked through his car, where he discovered that the bag containing his breakfast and his glove compartment had been searched. An amp in his backseat, which was screwed into a wooden plank and mounted, had been pried loose, and the wires had been disconnected, which blew out the amp. One of the speakers was also dented. Similar damage was done to the amp in his trunk. § 87(2)(b) did not observe any officer search his car [BR12]. § 87(2)(b) provided photographs of the alleged damage, but it is unclear from the photographs what damage was administered to the speakers [BR15 through BR17, respectively].

PO Casale believed that PO McCarthy transported § 87(2)(b)'s car to the stationhouse, where it was secured and vouchered. PO Casale searched the interior and trunk of § 87(2)(b)'s vehicle at the stationhouse. He did not recall observing any speakers inside the vehicle. No marijuana was recovered, which PO Casale stated was the primary reason for the search. § 87(2)(b)

§ 87(2)(b) was released with two summonses for § 87(2)(b) [BR15 through BR17, respectively]. PO Casale then walked § 87(2)(b) to his car. He did not tell § 87(2)(b) that his car was “shitty”. After returning his property, he did not have any further conversation with PO Casale [BR13].

PO McCarthy § 87(2)(g) testified that as he and PO Casale searched § 87(2)(b)'s car, he smelled a strong odor of marijuana coming from the central vent, and believed that § 87(2)(b) put his marijuana in there. He also found vegetative marijuana crumbs ground into the seat and rug. PO McCarthy did not take any action with § 87(2)(b)'s speakers, and only moved a pile of clothes, which he stated he placed back. PO McCarthy stated that he, PO Casale, and Sgt. Robert Maynard decided not to “rip open” the car to find where the marijuana odor was coming from, stating “it’s 2019” and they did not want to process § 87(2)(b). PO McCarthy did not walk § 87(2)(b) to his car and did not hear PO Casale call § 87(2)(b)'s car “shitty” [BR14]. BWC footage did not capture the officers searching § 87(2)(b)'s car nor did it show PO Casale using profanity towards § 87(2)(b).

People v Chestnut 43 A.D. 2d 260 (1974) states that the smell of marijuana smoke, with nothing more, is sufficient to provide police officers with probable cause to search an automobile and its occupants [BR18].

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to three prior CCRB complaints. § 87(2)(b)
- PO Casale has been a member of service for six years, and has been subject in four prior CCRB complaints and four allegations, none of which have been substantiated. § 87(2)(g)
- PO McCarthy has been a member of service for seven years, and has been subject in four prior CCRB complaints and 13 allegations. A discourtesy – word allegation was substantiated for case #201305283, for which he received instructions. § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of October 2, 2019, § 87(2)(b) has not filed a Notice of Claim with the New York City Office of the Comptroller regarding this incident [BR20].
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date